

STATE OF MICHIGAN
COURT OF APPEALS

EVAN L. RITZEMA and RUTH ANN RITZEMA,

Plaintiffs-Appellees,

v

TOWNSHIP OF MARTIN,

Defendant-Appellant,

and

HAROLD LEON MILLER and JOSHUA
WILLIAM COLE,

Defendants.

UNPUBLISHED
December 4, 2003

No. 241328
Allegan Circuit Court
LC No. 01-030587-NI

Before: Murray, P.J. and Gage and Kelly, JJ.

MEMORANDUM.

Defendant Township of Martin (Township) appeals by leave granted from an order denying its motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Township provided a fire truck for an event for special needs children and their families, which took place on private property. While inside the cab of the fire truck, a child dislodged the parking brake, causing it to roll down a hill. It crashed into a pole barn, pinning plaintiff Evan Ritzema. He suffered serious injuries, including a crushed pelvis, a broken arm and a fractured wrist. Plaintiffs averred in an amended complaint that defendants Joshua William Cole and Harold Leon Miller were the firefighters who parked the truck and that the defendants did not place chocks or blocks in front of the wheels and did not sufficiently secure the lever to the parking brake.

Defendant moved for summary disposition on grounds of governmental immunity. The trial court denied the motion adopting plaintiffs' argument that the motor vehicle exception to

governmental immunity applied. MCL 691.1405. We granted defendant's application for leave to appeal.¹

Defendant argues that the trial court erred in concluding that the motor vehicle exception to governmental immunity applied. We agree, based on our Supreme Court's decision in *Chandler v County of Muskegon*, 467 Mich 315; 652 NW2d 224 (2002)². There, an employee brought a bus into the bus barn to be cleaned and turned off the engine. As he was getting off the bus, its doors closed on his neck. The plaintiff injured his shoulder when he tried to assist. The Supreme Court held:

The *Random House Webster's College Dictionary* (1997) defines "operation" as "an act or instance, process, or manner of functioning or operating." We conclude, in accordance with this definition and in accordance with the narrow construction given to the exceptions to governmental immunity, [*Ross v Consumers Power Co (On Rehearing*, 420 Mich 567, 618; 363 NW2d 641 (1984)], that the language "operation of a motor vehicle" means that the motor vehicle is being operated as a motor vehicle.

Accordingly, aware that we are considering the dictionary definition of the word "operation," as well as construing a governmental immunity statute, which we must construe narrowly, we conclude that the "operation of a motor vehicle" encompasses activities that are directly associated with the driving of a motor vehicle. [467 Mich 320-321 (footnotes omitted).]

Since the vehicle in *Chandler* was parked in a maintenance facility for the purpose of maintenance, the Court concluded that it was not being operated as a motor vehicle. See also *Regan v Washtenaw County Bd*, 257 Mich App 39, 46; 667 NW2d 57 (2003) and *Poppen v Tovey*, 256 Mich App 351, 355-356; 664 NW2d 269 (2003).

In the present case, the fire truck was on display and stationary. This use was not "directly associated with the driving of a motor vehicle." Plaintiff has generally alleged that defendants failed to take precautions that might have averted this accident. However, even if the injuries can be said to have arisen from the failure to take these precautions, it cannot be said that the failure to have an employee inside the fire truck, put blocks in front of the wheels or secure the brake were "directly associated with the driving" of the vehicle. These were actions that somebody failed to take after the fire truck had come to a complete stop.

¹ *Ritzema v Township of Martin*, unpublished order of the Court of Appeals, issued July 17, 2002 (Docket No. 241328).

² The trial court did not have the benefit of the *Chandler* decision, because it was released after the trial court issued its order.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly